IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 1573 of 2001
(Old No.3203 of 1984)

Sri Kishan Lal Arora S/o Late Lekhraj Arora,
R/o Batasganj, House No. 28 P.S. Haldwani
District Nainital ....Appellant

Versus

1. Sri Om Prakash Arora
2. Sri Rajendra Kumar Arora.
Both S/o late Sri Lekhraj Arora
3. Smt. Parwati Arora W/o Late Sri Lekhraj Arora
All R/o Opposite Samta Yogeshwar Rampur Road, P.S. Haldwani, District Nainital
4. State of U.P.

....Opposite Parties

Dated: April 4, 2007

Sri M.S. Pal, Sr. Advocate assisted by Sri V.S. Pal, ld. Counsel for the appellant
Learned AGA for the State

HON. DHARAM VEER, J.

This appeal has been preferred against the order dated 10.08.1982 passed by IInd Addl. Munsif Magistrate, Haldwani in Criminal Case No. 613 of 1981, Kishal Lal Vs. Om Prakash & others, by which the complaint of the complainant was dismissed and the accused were acquitted.

2. The prosecution story in brief is that on 14.3.1981 at 8:00 A.M., Opposite Party voluntarily caused hurt to Sri Kishan Lal Arora (revisionist) and thereby committed an offence punishable under Section 323 I.P.C. The charge against the said section 323 IPC alongwith a charge under section 406 IPC for committing criminal breach of trust were framed by learned II Additional Munsif Magistrate, Haldwani against the opposite Party on 5.7.1982. Against the said charge, the accused/ opposite party pleaded not guilty and claimed to be tried. Thereafter, on 10.8.1982, when the case was

called out in the court of II Addl. Munsif Magistrate, Haldwani, the complainant was not present in the court. Hence, the learned court vide his order dated 10.8.1982 dismissed the case of the complainant in default. Aggrieved by the said order dated 10.8.1982, the revisionist/ complainant has come up in appeal before this Court.

3. On 24.08.2004, this Court directed District Judge concerned to get traced out the record and submit the same to this Court within one month. In compliance of the said order, as per the report from record room, Nainital, the District Judge, Nainital has informed that the record of the case has been weeded out on 10.08.1988. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223,* it was held as under:-

> ***"Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence."***

4. Even otherwise, after considering all the facts and circumstances of the case and on the basis of judgment and order on record, I do not find any incorrectness, illegality or impropriety in the impugned order passed by learned II Addl. Munsif Magistrate, Haldwani. Hence, I am of the considered view that the appeal deserves to be dismissed.

5. Consequently, the appeal is dismissed. No order as to costs.

(Dharam Veer, J.)

Rajeev Dang